No. 75-607

In the Supreme Court of the United States

OCTOBER TERM, 1975

ASSOCIATION OF MASSACHUSETTS CONSUMERS, INC.,
PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

DAVID FERBER,
Solicitor to the Commission,

GRANT G. GUTHRIE,
Special Counsel,

ANDREW F. MACDONALD,
Attorney,
Securities and Exchange Commission,
Washington, D.C. 20549.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Argument	9
Conclusion	16
Appendix	1a

CITATIONS

Cases:

American Electric Power Company, Inc., 40 S.E.C. 564	10
Louisiana Gas Service Company, et al., 40 S.E.C. 193	10
New England Electric System, 44 S.E.C. 756	4
New England Electric System, 41 S.E.C. 888	3
Securities and Exchange Commission v. *New England Electric System*, 376 F. 2d 399, reversed, 384 U.S. 176	3-4
Securities and Exchange Commission v. *New England Electric System* 376 F. 2d 107, reversed, 390 U.S. 207	4
United States v. *Interstate Commerce Commision*, 396 U.S. 491	11
Valley Gas Company, et al., 41 S.E.C. 867	10

Statutes and rules: Page

Federal Power Act, 49 Stat. 856, Section 305(b), 16 U.S.C. 825d(b) 14

Public Utility Holding Company Act of 1935, 49 Stat. 803, 15 U.S.C. 79, *et seq.*:

Section 2(a)(7), 15 U.S.C. 79b(a)(7) 3, 14, 1a-3a
Section 2(a)(7)(A), 15 U.S.C. 79b(a)(7)(A) 1a
Section 2(a)(7)(B), 15 U.S.C. 79b(a)(7)(B) 14, 1a
Section 2(a)(11)(A), 15 U.S.C. 79b(a)(11)(A) 11
Section 2(b), 15 U.S.C. 79b(b) 3, 3a-4a
Section 3(a), 15 U.S.C. 79c(a) 3, 15, 4a
Section 3(a)(1), 15 U.S.C. 79c(a)(1) 5, 4a-5a
Section 9(a)(2), 15 U.S.C. 79i(a)(2) 2, 8, 9, 11, 12
Section 10, 15 U.S.C. 79j 8, 9, 11, 12
Section 11(b), 15 U.S.C. 79k(b) 9, 10
Section 11(b)(1), 15 U.S.C. 79k(b)(1) 3, 13
Section 11(c), 15 U.S.C. 79k(c) 9, 10
Section 11(e), 15 U.S.C. 79k(e) 3, 4, 5, 9, 10
Section 12(d), 15 U.S.C. 79*l*(d) 3, 6, 7, 5a

Rules and Regulations under the Public Utility Holding Company Act of 1935:

Rule 6, 17 C.F.R. 250.6 ..... 3, 15, 5a
Rule 23(e), 17 C.F.R. 250.23(e) 3, 10, 6a

Statutes and rules—Continued Page

Securities and Exchange Commission's Rules of Practice:

Rule 9(c), 17 C.F.R. 201.9(c) 6, 10

Miscellaneous:

Moody's *Public Utility Manual* (1975 ed.) 14
New England Electric System, Public Utility Holding Company Act Release No. 16424 (July 11, 1969) 10
New England Electric System, Public Utility Holding Company Act Release No. 16618 (February 24, 1970) 10
New England Electric System, Public Utility Holding Company Act Release No. 17874 (February 5, 1973) 5
New England Electric System, Public Utility Holding Company Act Release No. 17906 (March 14, 1973) 5
New England Electric System, Public Utility Holding Company Act Release No. 17908 (March 16, 1973) 6
New England Electric System, Public Utility Holding Company Act Release No. 18133 (October 25, 1973) 7
Wall Street Journal, October 6, 1975 14
Wall Street Journal, November 10, 1975 14

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-607

ASSOCIATION OF MASSACHUSETTS CONSUMERS, INC.,
PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 516 F. 2d 711. The memorandum opinions and orders of the Securities and Exchange Commission ("Commission") issued on October 31, 1973, *New England Electric System*, Public Utility Holding Company Act Release No. 18149, and on January 11, 1974, Public Utility Holding

Company Act Release No. 18254, are set forth at Pet. App. 10a-25a.

JURISDICTION

The judgment of the court of appeals was entered on July 24, 1975. The petition for a writ of certiorari was filed on October 22, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Securities and Exchange Commission abused its discretion in denying petitioner consumers' association a hearing on the propriety of a sale of a gas utility subsidiary by a holding company registered under the Public Utility Holding Company Act, when the consumers' association failed to raise any specific issues in its application that it had not already raised in a companion proceeding then pending before the Commission.

2. Whether the Securities and Exchange Commission correctly determined that Section 9(a)(2) of the Public Utility Holding Company Act was not applicable to the acquisition of a gas utility company by an exempt holding company that merged with its only existing affiliate at the same time it effected the acquisition.

3. Whether the Securities and Exchange Commission abused its discretion in denying a hearing on the possible anti-competitive effects of the acquisition, when the issue was raised by the consumers' association for the first time in a petition for reconsideration of the Commission's order and when the Commission concluded that the objections of the consumers' association did not raise a substantial issue.

STATUTE INVOLVED

Portions of the Public Utility Holding Company Act of 1935 ("Act"), 49 Stat. 803, 15 U.S.C. 79, *et seq.*, are printed at Pet. App. 26a-40a. Sections 2(a)(7), 2(b), 3(a), and 12(d) of the Act, and Rules 6 and 23(e) of the Commission's rules and regulations under the Act, not there printed, are set forth in the Appendix, *infra*, 1a-6a.

STATEMENT

In 1964, the Commission entered an order under Section 11(b)(1) of the Act, 15 U.S.C. 79k(b)(1), requiring the New England Electric System ("NEES"), a registered holding company, to divest itself of its gas utility business. *New England Electric System*, 41 S.E.C. 888. Under Section 11(b)(1), a registered holding company is basically limited to a single integrated public-utility system. NEES was predominantly an electric utility holding company, but it also owned eight gas utility subsidiaries, one of which was Lawrence Gas Company ("Lawrence").

The Commission's order requiring NEES to divest its gas business was ultimately affirmed by this Court in 1968.[1] The Act, in Section 11(e), 15 U.S.C. 79k

---

[1] The Commission's order was initially affirmed in *Securities and Exchange Commission* v. *New England Electric System*,

(e), provides that companies may voluntarily comply with divestiture orders by submitting plans, subject to the Commission's approval, for the sale of stock or assets. Beginning in 1971, NEES filed three such plans. The present action arose out of the third of the Section 11(e) plans filed.

In the first round of negotiations, NEES successfully concluded arrangements to sell four of its gas companies, and the Commission approved the sale on December 30, 1971.[2] At about the same time, NEES commenced formal efforts to find purchasers for its remaining four gas companies, including Lawrence (C.A. App. 43).[3] In its request for bids from prospective purchasers, NEES offered to sell all four of the remaining gas companies to one purchaser or, in the alternative, to accept the most favorable aggregate of separate bids (C.A. App. 45). The combination that resulted in the greatest total consideration to NEES was the bid by Springfield Gas Light Company ("Springfield") for Lawrence alone, together with the bid by Eastern Gas and Fuel Associates ("Eastern") for the other three gas companies and for a non-utility subsidiary of NEES (C.A. App. 7, 52-53).

---

384 U.S. 176, reversing 346 F. 2d 399 (C.A. 1), and was reaffirmed in *Securities and Exchange Commission* v. *New England Electric System*, 390 U.S. 207, reversing 376 F. 2d 107 (C.A. 1).

[2] *New England Electric System*, 44 S.E.C. 756.

[3] "C.A. App." refers to the appendix in the court of appeals, a copy of which is being lodged with the Clerk of this Court.

Since two different purchasers were involved, NEES filed separate applications under Section 11(e) of the Act for the sale of three gas companies and the non-utility subsidiary to Eastern (the "Eastern plan") and for the sale of Lawrence to Springfield (the "Lawrence plan") (C.A. App. 1-79; 109-143). It was contemplated in connection with the latter plan that Springfield would simultaneously merge with its only subsidiary, Northampton Gas Light Company ("Northampton"), to form a new entity, Bay State Gas Company ("Bay State") (C.A. App. 126-127).[4] Notices giving interested persons the opportunity to request hearings on the two plans were issued by the Commission on February 5, 1973,[5] and March 14, 1973,[6] respectively.

Petitioner Association of Massachusetts Consumers, Inc., and several other interested persons and organizations requested a hearing on the Eastern sale (Pet. App. 19a-20a). In its request, petitioner objected to the combination of Boston Gas Company, owned by Eastern, with the three neighboring gas companies Eastern proposed to buy (C.A. App. 96-101).

---

[4] Bay State, like Springfield before it, is *prima facie* an exempt holding company under Section 3(a)(1) of the Act, 15 U.S.C. 79c(a)(1), since it and its public utility subsidiaries "carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized * * *."

[5] *New England Electric System*, Public Utility Holding Company Release No. 17874.

[6] *New England Electric System*, Public Utility Holding Company Release No. 17906 (C.A. App. 80-83).

On March 16, 1973, the Commission granted the requests for hearing, and petitioner was permitted to participate pursuant to Rule 9(c) of the Commission's Rules of Practice, 17 C.F.R. 201.9(c) (Pet. App. 3a, 20a).[7]

Petitioner alone also requested a hearing on the Lawrence plan and moved that any such hearing be consolidated with the hearing that had already been scheduled on the Eastern plan. Unlike its request as to the Eastern sale, however, petitioner did not raise any issue in its application that related specifically to Springfield's acquisition of Lawrence (C.A. App. 87-108). Instead, it merely referred to its objections to the Eastern acquisition and concluded that the Lawrence sale was "subject to many of the same objections * * *" (C.A. App. 102).[8]

The only common factual question raised by the two applications, however, was whether NEES had maintained competitive conditions in accordance with Section 12(d) of the Act, 15 U.S.C. 79*l*(d), in offering the properties for sale (Pet. App. 7a, 23a). The entire competitive process had dealt with all four of the gas utility companies without distinguishing among them. The division of the sale into two

[7] *New England Electric System*, Public Utility Holding Company Act Release No. 17908.

[8] The principal objections that petitioner had raised to the Eastern plan—the size and pipeline relationships of Boston Gas—were inapplicable on their face to Springfield's purchase of Lawrence, which involved very different facts. See *New England Service System*, Public Utility Holding Company Act Release No. 18254 (Pet. App. 22a).

plans occurred only at the conclusion of this process, when it appeared that the most favorable financial arrangement for NEES was to accept a combination of bids from different purchasers (C.A. App. 52-53). Otherwise the two plans dealt with different properties, different purchasers and different prices. The Commission therefore refused [redacted] to consolidate the proceedings and deferred action on the Lawrence plan until the issue of competitive conditions, which was being heard in the Eastern proceeding, was resolved. On October 25, 1973, the Commission approved the phase of the divestiture representing the sale to Eastern (Pet. App. 20a).[9]

At about the same time as the Commission's proceedings on the Eastern sale, the Massachusetts Department of Public Utilities conducted its own inquiry on the proposed purchase of Lawrence and on the merger of Springfield into Northampton to form Bay State. Following a public hearing on September 5, 1973, at which the petitioner did not appear, the Massachusetts DPU approved Springfield's purchase of Lawrence and the contemplated merger, but imposed extensive conditions to protect consumer interests (C.A. App. 126-134). Thereafter, on October 31, 1973, the Commission issued its Memorandum

[9] While the Eastern proceeding was shortened when all of those opposing the plan withdrew their opposition to Eastern as a purchaser, tne Commission independently found, as required by Section 12(d), that competitive conditions with respect to the sale had been maintained. *New England Electric System*, Public Utility Holding Company Act Release No. 18133 (C.A. App. 162, 164-165).

Opinion and Order approving the Lawrence sale and denying the Association's request for a hearing (Pet. App. 10a-17a). The Commission pointed out that the proposed acquisition was not subject to Section 9(a)(2) or Section 10 of the Act, 15 U.S.C. 79i(a)(2) and 79j (Pet. App. 11a, n. 6), that the only issue that had been effectively raised by petitioner—the maintenance of competitive conditions—had been resolved in the Eastern proceedings, and that there were no other identifiable reasons offered in support of petitioner's request for a hearing on the Lawrence sale (Pet. App. 23a-24a).

A subsequent request for reconsideration merely reiterated petitioner's opposition to the plan, which the Commission had already considered in its October 31 order (C.A. App. 144-151). In addition, petitioner for the first time raised an objection to the acquisition by Springfield because of that company's relation to other gas and electric utility companies having common officials (C.A. App. 148, n. *), which petitioner subsequently refers to as the "Tenney Group" and as a "de facto holding company" (Pet. 5, n. 6). The Commission denied the new request for a hearing (Pet. App. 18a-25a) and briefly addressed itself to the new issue of "doubtful merit or relevance" that had been raised (*id.* at 23a and n. 9):

> [The Association's] statement that as a result of the sale Lawrence is transferred from one combination gas and electric utility holding company to another is unfounded. Springfield is not part of a statutory holding-company system, and none of the companies with which it has any administrative relationships conduct an electric utility business in Lawrence. The sale of Lawrence effectively separates its gas business from the electric service that NEES provides in that area.

The court of appeals affirmed the Commission in all respects, holding that the Commission did not abuse its discretion in refusing to consolidate the Lawrence proceeding with the Eastern proceeding and in denying petitioner's request for a hearing and its subsequent motion for reconsideration (Pet. App. 3a-6a). The court also addressed the substantive issues. It agreed with the Commission that the acquisition by Springfield was not subject to approval under Sections 9(a)(2) and 10, 15 U.S.C. 79i(a)(2) and 79j (Pet. App. 9a), and that the maximum two-year period provided in Section 11(c), 15 U.S.C. 79k(c), for compliance with a Section 11(b) order was not a limitation on the Commission's discretion to approve divestiture plans under Section 11(e) (Pet. App. 6a-7a). It also rejected petitioner's claim that the Commission had failed in its statutory obligation to investigate the alleged anti-competitive effects of the acquisition by the Tenney group (*id.* at 8a).

ARGUMENT

The decision of the court of appeals is correct and is not in conflict with the decision of any other court. There is no reason for review by this Court.[10]

---

[10] While petitioner refers to the "out-of-time plan" (Pet. 2) and the "belated transfer" (Pet. 6) approved by the Com-

1. Petitioner does not dispute the Commission's determination that its request for a hearing on the Lawrence plan did not comply with the requirements of Rule 23(e) of the Rules and Regulations promulgated under the Act, 17 C.F.R. 250.23(e). That rule, together with Rule 9(c) of the Commission's Rules of Practice, 17 C.F.R. 201.9(c), requires that anyone who requests a hearing must specifically identify the nature of his interest and the reasons that justify holding a hearing. The reasons given in petitioner's application were totally inadequate to satisfy these rules, as the court of appeals found (Pet. App. 5a):

> The requirement that the intervenors specify the issues which demand a hearing serves important purposes. It enables the Commission to screen out frivolous requests for hearings and efficiently conduct hearings. Here, where the

mission, it does not challenge the finding of the court of appeals that the Commission may approve a Section 11(e) plan filed after expiration of the two-year period provided by Section 11(c) (Pet. App. 6a-7a), nor does it claim it was prejudiced by the delay. NEES originally had until April 3, 1969, to comply with the Commission's Section 11(b) order. By subsequent orders, however, the time was extended to April 2, 1970. *New England Electric System*, Public Utility Holding Company Act Release Nos. 16424 (July 11, 1969) and 16618 (February 24, 1970) (C.A. App. 107-108). These are not isolated examples of Commission approval of Section 11(e) plans after the two-year period allowed by Section 11(c). As an historical matter, full compliance with Section 11(b) orders issued by the Commission has often taken much longer than the two years anticipated by that section. See, *e.g.*, *Valley Gas Company, et al.*, 41 S.E.C. 867; *American Electric Power Company, Inc.*, 40 S.E.C. 564; *Louisiana Gas Service Company, et al.*, 40 S.E.C. 193.

> subject matter is so complex, poorly framed issues could turn the hearings into a maze in which justice could be lost. The strict application of those procedural rules seems appropriate here, where the intervenors were clearly on notice that they must comply with Rule 9.

Furthermore, petitioner's application for a hearing on the Lawrence plan contended only that the proposed sale raised many of the same objections that were raised in the Eastern proceeding (C.A. App. 102), in which petitioner fully participated (Pet. 10). As noted p. 6, *supra*, the only common question was whether NEES had maintained competitive conditions, an issue that had been resolved in the hearing on the Eastern plan. Thus, the Commission's refusal to consolidate the two proceedings or to accord petitioner a hearing on the Lawrence plan was not an abuse of discretion. *United States* v. *Interstate Commerce Commission*, 396 U.S. 491, 520-521.

2. Petitioner contends that the Commission was required by Section 9(a)(2) of the Act, 15 U.S.C. 79i(a)(2), to prohibit the sale of Lawrence to Springfield unless the Commission expressly found that the acquisition complied with the standards of Section 10, 15 U.S.C. 79j. Specifically, Section 9(a)(2) requires a company that already is an "affiliate," as defined in Section 2(a)(11)(A) of the Act, 15 U.S.C. 79b(a)(11)(A),[11] of one public utility com-

[11] Section 2(a)(11)(A) defines an "affiliate", *inter alia*, as an individual or company that owns or controls five percent or more of the voting stock of a specified company. Thus, the "affiliate" relationship exists between a parent and subsidiary.

pany to apply for Commission approval before it may acquire stock in another company that would become its second "affiliate." Petitioner argues that Springfield, which before the sale already had one subsidiary, *i.e.*, Northampton, had to meet the standards of Section 10 in order to purchase Lawrence, which would thereby become its second subsidiary.

The Commission and the court of appeals correctly rejected this argument. Concurrent with the Lawrence acquisition, Springfield and its former subsidiary, Northampton, merged to create the present parent company, Bay State. Thus, both before and after the acquisition, only a single affiliate relationship—Northampton and Springfield, followed by Bay State and Lawrence—existed. The Commission's interpretation of Section 9(a)(2) as giving effect to the final results of the sequence of the simultaneous corporate adjustments was a reasonable construction of the statute. As the court below held (Pet. App. 9a):

> We find the Commission's reasoning persuasive. In assessing interrelated corporate adjustments, comparison should be made of the situation just prior to and immediately following the adjustments. The sequence of relatively simultaneous corporate adjustments whose order has no practical effect do not govern the applicability of section 9(a)(2).

3. Petitioner's allegations that the Commission has frustrated the purposes of the Act and has contravened this Court's mandate in the *New England*

Electric System cases have no support in the record. To the contrary, the divestiture by NEES and purchase by Springfield have furthered these goals. Prior to the sale, Lawrence was owned by a holding company with electric utility holdings that, in many localities including Lawrence, competed directly with the retail gas business of the same system. Presently, however, neither Bay State nor any other company in the Tenney group serves electric customers in the Lawrence service area. Thus, the goal of Section 11(b)(1) to further competition in the public utility industry was achieved by the Commission's order.

Furthermore, the Commission's approval of the sale does not foreclose additional regulatory measures in the future should they appear necessary. The Tenney group is a loose affiliation of companies, predating the Act, arising primarily from the fact that members of the Tenney family have long been substantial stockholders in each of the companies and the companies have had the majority of their directors and executive personnel in common.[12] Although

---

[12] C. H. Tenney, II, is the chairman and chief executive officer of Bay State, and held the same position with Brockton Taunton Gas Company, also a Massachusetts company, prior to that company's merger into Bay State in November 1974. The other utility companies in which Tenney and his associates are interested are Exeter & Hampton Electric Company and Concord Electric Company, both of which are incorporated in New Hampshire Fitchburg Gas & Electric Light Company, a Massachusetts company; and Orange and Rockland Utilities, Inc., a New York company. Orange and Rockland, which has two wholly-owned subsidiaries serving contiguous areas in New Jersey and Pennsylvania, and Bay State

these facts alone do not make the group a holding-company system under the Act,[13] the Commission may designate any of its members as a holding company if, after a hearing upon notice, it appears that he has "such a controlling influence over the management or policies" of a public utility "as to make it necessary or appropriate in the public interest or for the protection of investors or consumers" that he "be subject to the obligations, duties, and liabilities" imposed by the Act upon holding companies.[14] Section 2(a)(7)(B), 15 U.S.C. 79b(a)(7)(B).

---

are themselves exempt holding companies. The remaining companies are solely operating companies and conduct business only in the states in which they are incorporated. See Moody's *Public Utility Manual*, pp. 85-95, 2608-2609, 2679-2680, 2730-2733 and 2743-2744 (1975 ed.).

[13] Under Section 2(a)(7) of the Act, a company that owns 10 percent or more of the voting stock of a public utility is presumed to be a holding company, whereas a natural person who owns such control of a public utility is not.

[14] Petitioner's sole objection to the Tenney group apparently relates to a possible need to eliminate certain interlocking directorates, rather than the need for regulating that group as a holding-company system. A pending Federal Power Commission proceeding under Section 305(b) of the Federal Power Act, 49 Stat. 856, 16 U.S.C. 825d(b), has to some measure resolved the problems of which petitioner complains. Following a show cause order issued by the Federal Power Commission on September 15, 1975 (Pet. App. 43a-49a), Tenney and several associates either resigned or announced their intention to resign positions with Fitchburg Gas & Electric Company or with Orange and Rockland Utilities, Inc., which is by far the largest company in the Tenney group. See *Wall Street Journal*, October 6, 1975, p. 15, and November 10, 1975, p. 14. Significantly, it was under the Federal Power Act,

In addition, although Bay State is an exempt holding company because of the intrastate nature of its business, see p. 5, n. 4, *supra*, the Commission may terminate the exemption upon notice if it "finds the exemption detrimental to the public interest or the interest of investors or consumers * * *." Section 3(a), 15 U.S.C. 79c(a); Rule 6, Rules and Regulations under the Public Utility Holding Company ~~under the~~ Act, 17 C.F.R. 250.6. Thus, the Commission retains the power to exercise its full jurisdiction over Bay State should developments contrary to the public interest arise.

---

which was enacted as part of the same legislation containing the Public Utility Holding Company Act, that Congress chose to regulate interlocking directorships and officers. As the court below noted (Pet. App. 8a), "[e]limination of common officers and directors in noncompeting utility companies was not the precise purpose of the Act." The division of authority between the Federal Power Commission and the Securities and Exchange Commission only highlights the distinction that should be drawn between dealing with interlocking directorates and regulating persons as holding companies.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DAVID FERBER,
Solicitor to the Commission,

GRANT G. GUTHRIE,
Special Counsel,

ANDREW F. MACDONALD,
Attorney,
Securities and Exchange Commission.

DECEMBER 1975.

APPENDIX

Public Utility Holding Company Act of 1935, 49 Stat. 803, 15 U.S.C. 79, *et seq.*:

Section 2(a), 15 U.S.C. 79b(a):

When used in this title, unless the context otherwise requires—

* * * * *

(7) "Holding company" means—

(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and

(B) any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

The Commission, upon application, shall by order declare that a company is not a holding company

under clause (A) if the Commission finds that the applicant (i) does not, either alone or pursuant to an arrangement or understanding with one or more other persons, directly or indirectly control a public-utility or holding company either through one or more intermediary persons or by any means or device whatsoever, (ii) is not an intermediary company through which such control is exercised, and (iii) does not, directly or indirectly, exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon holding companies. The filing of an application hereunder in good faith by a company other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company, until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of any order granting such application and as a part of any such order, the Commission may require the applicant to apply periodically for a renewal of such order and

to do or refrain from doing such acts or things, in respect of exercise of voting rights, control over proxies, designation of officers and directors, existence of interlocking officers, directors and other relationships, and submission of periodic or special reports regarding affiliations or intercorporate relationships of the applicant, as the Commission may find necessary or appropriate to ensure that in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application of the company affected, shall revoke the order declaring such company not to be a holding company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order.

Section 2(b), 15 U.S.C. 79b(b):

No person shall be deemed to be a holding company under clause (B) of paragraph (7) of subsection (a), or a subsidiary company under clause (B) of paragraph (8) of such subsection, or an affiliate under clause (D) of paragraph (11) of such subsection, unless the Commission, after appropriate notice

and opportunity for hearing, has issued an order declaring such person to be a holding company, a subsidiary company, or an affiliate, or declaring a class of which such person is a member to be affiliates. Such an order shall not become effective for at least thirty days after the mailing of a copy thereof to the person thereby declared to be a holding company, subsidiary company, or affiliate; or, in the case of determination of affiliates by classes, until at least thirty days after appropriate publication thereof in such manner as the Commission shall determine. Whenever the Commission, on its own motion or upon application by the person declared to be a holding company, subsidiary company, or affiliate, finds that the circumstances which gave rise to the issuance of any such order no longer exist, the Commission shall by order revoke such order.

Section 3(a), 15 U.S.C. 79c(a):

The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

> (1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in

> character and carry on their business substantially in a single State in wihch such holding company and every such subsidiary company thereof are organized;

Section 12(d), 15 U.S.C. 79*l*(d):

It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

Rules and Regulations, Public Utility Holding Company Act of 1935:

Rule 6, 17 C.F.R. 250.6:

Termination of exemptions. If it appears to the Commission (on the basis of statements claiming exemption or otherwise) that a substantial question of law or fact exists as to whether any holding company claiming exemption under § 250.2, § 250.3, § 205.4, § 250.5, or § 250.10 or any other section now or hereafter in force pursuant to section 3(a) of the

act exempting any class of holding companies from the registration requirements of the act, is within the exemption afforded by any such section, or if it appears that any question exists as to whether the exemption of any such company may be detrimental to the public interest or the interest of investors or consumers, the Commission may notify such holding company to that effect by registered mail. Thirty days after such notification, such exemption shall terminate, without prejudice to the right of such holding company to file an application for an order granting such an exemption pursuant to any applicable section of the act, and without prejudice to any temporary exemption provided for by the act if such application is filed in good faith.

Rule 23(e), 17 C.F.R. 250.23(e):

Notice of filing. The Commission will publish in the FEDERAL REGISTER notice of the filing of a declaration or application, stating the earliest date upon which such declaration or application, as filed or as amended, may be permitted to become effective or be granted. Any interested person may, not later than fifteen days after the publication of such notice or such other date as may be fixed therein, request the Commission in writing that a hearing be held, stating his reasons therefor and the nature of his interest.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 598977 158